511 W. Melrose St., #401
Chicago, IL 60657

122485

February 12, 2001

Docket Clerk
USDOT Dockets, Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Docket No. FHWA-97-2979 – 58

Dear Sir or Madame:

I am writing in response to the proposed regulations concerning the protection of consumers who ship their household goods via interstate motor carrier. I have enclosed court documents filed in connection with my lawsuit, Chen v. Mayflower Transit, Inc., no. 99 C 6261 (N.D. Ill., filed Sept. 23, 1999), currently pending in federal court. I have also included a letter from Mayflower's lawyers.

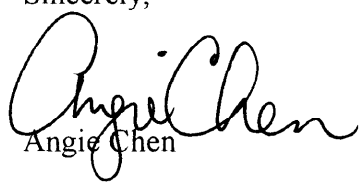
The facts of my case are fully set forth in the court documents. In brief, they are as follows. In June 1999, I contracted with Mayflower to move my belongings from Atlanta, Georgia to Chicago, Illinois. Mayflower's contract stated that the fee for the move was "binding" and "guaranteed not to exceed" $1741.89. However, when the moving van arrived in Chicago, Mayflower, without warning, attempted to collect amounts ranging from $2556.69 to $5122.83, in cash, and threatened to auction off my goods if they did not receive payment of the inflated fee. When I could not raise these extreme sums in cash on virtually no notice, Mayflower sent the moving van away with my property. I did not get my belongings back until more than three months later, when my lawyer filed an injunction to force their return. The Mayflower agent in Atlanta who gave the "guaranteed" estimate was Admiral Moving & Storage, Inc. The Mayflower agent in Chicago who held my goods hostage, tried to extract an exorbitant fee, and threatened to sell my goods was Century Moving & Storage, Inc. of Lombard, Illinois. Mayflower's lawyers have informed me that Mayflower believes this conduct is "per se legal."

My comment pertains to the definition and requirements of "Binding Estimates" in the proposed revision of the pamphlet, "Your Rights And Responsibilities When You Move" (Subpart D). The proposed definition would allow moving companies to do exactly what Mayflower did – attempt to collect, in full, additional charges at destination for false and unnecessary "additional services," citing "destination charges often not known at origin" as pretext. (The current proposed definition of "binding estimate" would also eviscerate the "110% rule," insofar as the "additional destination

services" may cause the original estimate to be suddenly exceeded by much more than 10 percent; in my case, it was exceeded by 50 percent.) In all cases, the burden should be on the moving company, not the customer, to anticipate all unloading conditions at destination, especially if the moving company is a national van line such as Mayflower, with hundreds of agents across the country.

In short, a "binding estimate" for delivery must mean exactly that -- no additional charges, period. Otherwise, the individual consumer is at the mercy of a moving company that has determined to defraud, extort and then claim later that such tactics are "legal."

Sincerely,



Angie Chen

Encl.

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December 27, 2000

WRITER'S DIRECT DIAL
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FILE NO.
785927

VIA TELEFAX
Mr. José A. Isasi, II
Sachnoff & Weaver
30 S. Wacker Dr., 29th Floor
Chicago, IL 60606

Re: *Chen v. Mayflower Transit*

Dear Mr. Isasi:

Mayflower has asked us to notify you and your client of its intention to seek sanctions under Fed.R.Civ.P. 11 against either or both of you, as appropriate, in the event that the unwarranted escalation of this case proceeds.

First of all, it should be obvious that the RICO counts in the proposed Second Amended Complaint are not warranted by existing law, or by any nonfrivolous argument for the extension, modification, or reversal of existing law. As outlined in Mayflower's response to the Motion for Leave to Amend, which was served on you last Friday, there are a number of basic defects in the RICO claim: None of the conduct alleged, even if not only facts but conclusions and rhetoric are taken as true, can fairly be characterized as mail fraud, wire fraud, extortion, or robbery. In fact, most of the practices of which Ms. Chen complains –refusing to accept a credit card without advance credit clearance, charging for additional services at the point of delivery over and above the estimate, and refusing to release the shipment until full payment is received-- are specifically permitted by Mayflower's tariff, and in some cases by statute as well. All are incorporated into the contract documents very clearly. Therefore they are *per se* legal. Moreover, your client's dealings with Mayflower are clearly the kind of short-term, closed-ended transaction that the courts have stated over and over again is not covered by RICO. Dragging in allegations made by a handful of other shippers in unrelated claims does not change that. No "pattern and practice" of racketeering is alleged. In addition, the "enterprise" pled is "Mayflower and its agents," which is tantamount to saying Mayflower. It is well established that the RICO "enterprise" cannot be the "person." Nor, for purposes of RICO conspiracy, can Mayflower conspire with its agents.

With regard to the counts already on file, upon completion of discovery it is clear that the claims for intentional and negligent infliction of emotional distress are not supported by law, either. No reasonable person could possibly characterize Mayflower's treatment of Ms. Chen as "outrageous," or "so extreme in degree, as to go beyond all possible bounds of decency," especially

in view of the conduct which Illinois courts, and federal courts applying Illinois law, have found not to meet that standard in the past. [See, e.g. *Public Finance Corporation v. Davis*, 66 Ill.2d 85, 360 N.E.2d 765 (1976); *Morrison v. Sandell*, 112 Ill.App.3d 1057, 446, N.E.2d 290 (1983); *Harriston v. Chicago Tribune Co.*, 992 F.2d 697 (7th Cir. 1992)]. Nor does Illinois law support a claim for negligent infliction of emotional distress in the absence of any danger of physical harm, or even of physical contact.

It is perhaps best at this point not to speculate about the purpose for which these claims have been advanced. Suffice it to say that they do not further the cause of settling this matter on reasonable terms, or indeed of settling it at all. In any event, it is difficult to see how you or your client could read the case law carefully and still pursue them. And Ms. Chen, being an attorney herself, must be held to a higher standard than a lay litigant. Mayflower respectfully requests that you withdraw these purported claims before even more time and effort are expended in countering them.

Sincerely,

Marcos Reilly

735927/3002306.1-HC01_DS2A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ANGIE CHEN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 99 C 6261
	)	
MAYFLOWER TRANSIT, INC.,	)	Magistrate Judge Brown
	)	(referred for all matters)
Defendant.	)	

PLAINTIFF'S MOTION FOR LEAVE TO FILE *INSTANTER* PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff Angie Chen, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and this Court's scheduling order of November 13, 2000, hereby respectfully requests leave to amend her pleadings and file instanter the Second Amended Complaint attached hereto as Exhibit A. In support hereof, Plaintiff states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND[1]

Slightly over a year ago, Plaintiff Angie Chen brought this suit against Mayflower Transit, Inc. ("Mayflower") after becoming the victim of a bait-and-switch scheme by Mayflower and two of its disclosed agents, Admiral Moving and Storage, Inc. ("Admiral") and Century Moving and Storage, Inc. ("Century"). Admiral contracted with Ms. Chen on behalf of Mayflower to transport her property from Atlanta to Chicago and gave her a "guaranteed not to exceed" estimate that the move would cost no more than $1,741. She accepted and signed this estimate, only to later find that Admiral substituted a second version of the estimate and obtained her signature without telling her that it had materially changed the terms of the contract.

[1] The source for all facts contained in this Introduction is Plaintiff's Second Amended Complaint. Specific paragraph citations can be found within the body of this motion.

Century, the hauling agent for Ms. Chen's shipment and another disclosed agent of Mayflower, failed to deliver her property during the delivery window specified by the contract. Finally on June 30, 1999 – nine days after her shipment was due – Century arrived at Ms Chen's apartment building with her goods on their truck. Century refused to unload her property until Ms. Chen paid hundreds of dollars more than the "guaranteed not to exceed" estimate in cash. Prior to her move, Ms. Chen had received a letter from Admiral-Mayflower indicating she would be permitted to pay by credit card, but now she was told the payment would have to be in cash or certified funds. While Century's truck waited and continued to rack up charges, Ms. Chen (who did not yet have a bank account in Chicago) frantically tried to raise the cash to pay the inflated demand. In the meantime, Century nearly doubled the "guaranteed not to exceed" estimate in additional charges. Ms. Chen repeatedly offered to pay the full inflated amount by credit card, but Century and/or Mayflower refused to process her credit card. Ultimately, Mayflower instructed Century to depart without unloading a single article of Ms. Chen's property.

Ms. Chen recently learned that she is not the only victim of this kind of bait-and-switch scheme. Within the last several weeks, it became apparent that the treatment Ms. Chen suffered at the hands of Mayflower, Century, and Admiral is part of a pattern of conduct by these parties and other disclosed agents of Mayflower. Like Ms. Chen, other customers have been fraudulently induced to engage Mayflower and its agents through use of "not to exceed" estimates and other misrepresentations – only to be slammed with dramatically inflated charges and forced either to pay the charges or risk losing all their household belongings. This pattern provides a new and thoroughly appropriate remedy for the wrongs already alleged in Ms. Chen's complaint – RICO. As detailed below, Ms. Chen seeks this Court's leave to amend her

complaint and add a single additional count, alleging that – in addition to her other legal theories – the wrongs done to her are part of a pattern of racketeering activity in violation of RICO.

II. STANDARD FOR GRANTING LEAVE TO AMEND

Federal Rule of Civil Procedure 15(a) provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. Pro. 15(a). The U.S. Supreme Court has further held that leave to amend should be granted under Federal Rule of Civil Procedure 15(a) unless there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." Foman v. Davis, 371 U.S. 178, 182, S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962); Ferguson v. Roberts, 11 F.3d 696, 706 (7th Cir. 1993). Thus, there is a presumption that leave to amend will generally be "freely given" and denied only where there is a persuasive reason to do so. Here, none of the reasons for denying leave to amend apply, and Plaintiff's motion should be granted.

A. There Was No Undue Delay

Plaintiff's First Amended Complaint was filed a little over one year ago, on November 23, 1999. Defendant filed its Answer and Counterclaim on January 18, 2000, seeking damages for breach of contract. Defendant was granted leave to amend its pleadings on October 23, 2000 and filed its Amended Answer and Counterclaim as recently as November 13, 2000.

On or about October 27, 2000, Plaintiff learned of a case filed by another individual shipper, Craig J. Petrowiak, in the United States Federal District Court for the Northern District of Illinois against Century Moving & Storage, Inc.[2] Upon review of the court file, Plaintiff discovered numerous similarities between what happened to her and to Mr. Pietrowiak. Most

[2] Pietrowiak v. Century Moving & Storage, Inc., No. 99 C 7419, 1999 WL 1295133 (N.D. Ill., Dec. 20, 1999).

notably, Mr. Pietrowiak's contract with Century, like Plaintiff's contract with Admiral, included a handwritten term – not defined by Mayflower's federal tariff – that his moving costs were "not to exceed" the written estimate. Also like the Plaintiff, Mr. Pietrowiak was informed, after his goods were loaded onto a truck and driven part way to California, that his moving costs would, in fact, exceed the estimate by more than half.

Within a matter of days, on November 1, 2000, Plaintiff's counsel informed the Court and opposing counsel that Plaintiff recently learned of the Pietrowiak case and was investigating the facts and considering whether to seek leave to amend her complaint to include a count for a civil RICO violation. After further investigating the relevant facts and law, Plaintiff's counsel informed the Court and opposing counsel on November 13, 2000 that Plaintiff had identified an overall pattern of racketeering activity in violation of RICO, and that she would seek leave to amend her complaint accordingly. This Court has not set a trial date.

Plaintiff notified the Court and opposing counsel as soon as possible after learning of the facts that give rise to Plaintiff's proposed amended complaint. There has been no undue delay in Plaintiff's decision to seek leave to amend her complaint, and leave to amend should be granted.

B. Plaintiff Brings Her Motion for Leave to Amend in Good Faith

Since first uncovering the pattern of racketeering activity in October, Plaintiff has candidly disclosed to the Court and Mayflower's counsel the possibility that it would seek to amend the First Amended Verified Complaint. On November 1, 2000, Plaintiff requested and was granted time to conduct an investigation into the facts and law that bear upon the proposed amendment so that she could make a reasoned decision regarding whether to seek leave to amend her pleadings. After conducting her investigation, Plaintiff has concluded that there is, indeed, a good faith basis to bring her claim for RICO violations.

There is simply nothing to suggest that Plaintiff is seeking leave to amend her complaint for anything other than good faith reasons and leave to amend should be granted.

C. Plaintiff Has Not Failed to Cure Past Deficiencies

Plaintiff has not failed to cure any past deficiencies in her pleadings. She has amended her pleadings only once before – then as a matter of course under Federal Rule of Civil Procedure 15(a) before the Defendant filed a responsive pleading.[3] Indeed, no challenge to Plaintiff's pleadings has ever been made. Accordingly, there has not been a failure to cure past deficiencies and Plaintiff should be granted leave to file her Second Amended Complaint.

D. No Undue Prejudice Will Result From Granting Plaintiff Leave to Amend

Defendant will not suffer any undue prejudice if Plaintiff is permitted to amend her complaint because the proposed factual allegations and parties are, for the most part, identical to those identified in the First Amended Verified Complaint, and a delay in the proceedings will not prejudice Mayflower's counterclaim.

1. The Proposed Amendment Is Comprised Primarily of Identical Facts and Claims

The majority of the claims in the proposed amendment (Counts I through IV) are identical to the corresponding counts in the First Amended Verified Complaint. With her proposed amendment Ms. Chen does not seek to allege that additional wrongs were done to her. Rather, the amendment merely adds a legal theory on which newly discovered facts demonstrate that she is entitled to recover for the wrongs she has alleged all along. It is well established that having "specified the wrong done to [her], a plaintiff may substitute one legal theory for another

[3] When she initially filed her Verified Complaint, Mayflower was still holding Ms. Chen's personal belongings in its warehouse. Therefore, in addition to the monetary relief she is currently seeking, Plaintiff initially sought a temporary restraining order and injunction ordering the Defendant to return Ms. Chen's goods. After a hearing on Plaintiff's motion for a temporary restraining order, the parties agreed that Ms. Chen's goods would be released. Plaintiff's First Amended Complaint deleted the requested injunctive relief.

without altering the complaint." Albiero v. City of Kankakee, 122 F.3d 417, 419 (7th Cir. 1997). Where, as here, the additional legal theory must be pled with heightened factual particularity or encompasses additional elements, courts have allowed plaintiffs to amend and fully describe the additional theory. Wagner v. Magellan Health Services, Inc., No. 99 C 8235, 2000 WL 804692, *6 (N.D. Ill., June 21, 2000)[4] (permitting plaintiff to amend pleadings to add a RICO claim and corresponding elements).

Here, the factual allegations in the First Amended Complaint (paragraphs 1 through 51) support both the existing counts and the proposed Count V. Indeed, the Factual Background to All Counts of the proposed amendment (paragraphs 6-57) is substantively identical to the corresponding paragraphs in the First Amended Complaint; the minor changes and additions to those paragraphs merely add the particularity required by Federal Rule of Civil Procedure 9(b) for pleading predicate acts of fraud under RICO.

The Defendant's racketeering activity was described – at least as it was directed toward Ms. Chen – in great detail in the First Amended Verified Complaint. Mayflower had the opportunity to explore these allegations throughout the discovery process. The additional factual allegations outline the parameters of the RICO Enterprise which acted upon Ms. Chen and other customers/victims, describe the enterprise's *pattern* of racketeering activity (of which the wrongs done to Ms. Chen form only a part), and identify additional victims who suffered similar harms at the hands of the enterprise. Ms. Chen has already specified the wrongs done to her, but seeks to add a legal theory that would provide a remedy for those wrongs. Because of the nature of the

[4] A copy of all decisions available only via Westlaw are attached as Exhibit B.

theory, however, Ms. Chen should be permitted to amend her complaint to meet the pleading requirements of RICO.[5]

2. No Undue Prejudice Will Result From a Delay in the Proceedings

Absent a showing of undue prejudice, "a mere delay in the commencement of the action should not ordinarily operate to preclude a motion to amend the complaint." Doherty v. Davy Songer, Inc., 195 F.3d 919, 927 (7th Cir. 1999) (citations omitted). Here, this Court has not set a trial date. Moreover, far from being prejudiced by a delay in the trial date, counsel for Mayflower has agreed (and informed the Court during the telephonic hearing held on November 13, 2000) that its counterclaim, which was itself amended last month, would not be prejudiced by a delay.

For all of these reasons, no undue prejudice would result and Plaintiff should be granted leave to file her Second Amended Complaint.

III. PLAINTIFF'S RICO CLAIM WOULD SURVIVE A MOTION TO DISMISS

In her proposed Second Amended Complaint, Plaintiff alleges that the defendants violated sections 1962(c) and 1962(d) of RICO. Because Plaintiff's RICO claim would withstand a motion to dismiss, her proposed amendment is not futile and leave to file the amendment should be granted.

A. The Amendment Is Not Futile

An amendment is "futile" only "when it fails to state a valid theory of liability or could not withstand a motion to dismiss." Bower v. Jones, 978 F.2d 1004, 1008 (7th Cir. 1992).

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[5] To the extent that Plaintiff's proposed Count V raises new factual issues, it is appropriate to eliminate any potential prejudice by reopening discovery limited to new factual issues raised in the RICO claims. See Williams Electronics Games, Inc. v. Barry, 97 C 3743, 2000 WL 794578, *1 (N.D. Ill., June 19, 2000) (granting leave to amend pleadings to include RICO count and reopening discovery on newly raised factual issues). In so doing, no undue prejudice to the Defendants would result.

Whether or not an amendment would be futile is judged by the same legal standard that applies to a Federal Rule of Civil Procedure 12(b)(6) motion. General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1085 (7th Cir. 1997). Therefore, an amendment may be found futile only "if it appears beyond a doubt that the plaintiff can prove no facts in support of its claim that would entitle it to relief." Sliter v. Cruttenden Roth, Inc., No. 00 C 3845, 2000 WL 1745184, *1 (N.D. Ill., Nov. 27, 2000) (standard for dismissal under Fed. R. Civ. Pro 12(b)(6)); see also Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Kennedy v. Nat'l Juvenile Det. Assoc., 187 F.3d 690, 695 (7th Cir. 1999). In making that assessment, the Court must accept as true all well pleaded facts alleged in the proposed amendment and draw all reasonable inferences from those facts in favor of the Plaintiff. Jackson v. E.J. Brach Corp., 176 F.3d 971, 977 (7th Cir. 1999); Zemke v. City of Chicago, 100 F.3d 511, 513 (7th Cir. 1996).

B. Plaintiff States a Claim under § 1962(c)

RICO § 1962(c) provides that

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

To state a viable cause of action under § 1962(c), a plaintiff must allege four elements and facts sufficient to support each: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Goren v. New Vision International, Inc., 156 F.3d 721, 727 (7th Cir. 1998); Viacom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 778 (7th Cir. 1994).

First, to satisfy the "conduct" requirement, the plaintiff must allege that the defendant "participated in the operation or management of the enterprise itself," and that the defendant played "some part in directing the enterprise's affairs." Goren, 156 F.3d at 727 (citing Reves v. Ernst & Young, 507 U.S. 170, 183, 113 S. Ct. 1163, 122 L. Ed. 2d 525 (1993)).

Here, Ms. Chen has alleged that Mayflower's role in the management and/or operation of the enterprise included everything from issuing guidelines and requirements, to taking in and distributing revenues between itself and the other members of the Enterprise, to maintaining the federal authority necessary for it and the other members of the Enterprise to operate. (2nd Am. Compl., ¶ 58-64.) Thus, Plaintiff has clearly alleged sufficient facts to satisfy the "conduct" prong of a RICO violation.

Second, under RICO, an "enterprise" is "an ongoing 'structure' of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making." Richmond v. Nationwide Cassel, L. P., 52 F.3d 640, 644 (7th Cir. 1995) (citing Jennings v. Emry, 910 F.2d 1434, 1440 (7th Cir. 1990)). An enterprise may be either a legal entity or an "association in fact" made up of a "group of persons associated together for a common purpose of engaging in a course of conduct." Richmond, 52 F.3d at 644; U.S. v. Turkette, 452 U.S. 576, 583, 101 S. Ct. 2524, 2528, 69 L. Ed. 2d 246 (1981); 18 U.S.C. § 1961(4). Additionally, the defendant or person alleged to have violated RICO must be distinct from the RICO "enterprise." Richmond, 52 F.3d at 643.

In the factual background to her proposed Count V, Plaintiff alleges that the Enterprise in question is an association in fact between Mayflower and its local disclosed agents. (2nd Am. Complt., ¶ 58-66.) All of the participants in the Enterprise are associated in the common purpose of marketing, selling, packing, hauling, storing, and delivering interstate shipments of household goods. All of the participants in the Enterprise operate under the aegis of Mayflower's federal tariff and under guidelines for fees and pricing set forth by Mayflower. (2nd Am. Complt., ¶¶ 59, 64.) Thus, Plaintiff has alleged that Mayflower, along with other entities and individuals,

operate in concert as an "Enterprise" that is sufficiently structured, hierarchical, and joined together for a common purpose.

Third, a RICO plaintiff must allege that the defendant engaged in racketeering activity. Racketeering activity consists of, among other things, acts in violation of various sections of the United States Code enumerated in RICO § 1961. Here, Plaintiff has alleged that the Enterprise operated through numerous different predicate acts in violation of the enumerated statutes including mail fraud (18 U.S.C § 1341), wire fraud (18 U.S.C. § 1343), theft from interstate shipment (18 U.S.C. § 659) and extortion in violation of the Hobbs Act (18 U.S.C. § 1951). (2nd Am. Complt., ¶¶ 67-82.) Her allegations include at least 4 instances of mail fraud, 16 instances of wire fraud, and at lease one instance each of theft from interstate commerce and extortion. Thus, Plaintiff has clearly alleged racketeering activity sufficient to state a cause of action.

Finally, a RICO plaintiff must allege a "pattern" of racketeering activity. To allege a pattern, the complaint must identify two or more predicate acts that are related to each other, and that amount to or pose a threat of continued criminal activity. Corley v. Rosewood Care Center, Inc. of Peoria, 142 F.3d 1041, 1049 (7th Cir. 1998) (citing H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 237, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989)). In other words, the plaintiff must show "continuity plus relationship with respect to the alleged predicates." Id.

In H.J. Inc., the Court stated that the "relatedness" requirement is met if the predicate acts "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." 492 U.S. at 240 (citations omitted) (emphasis added).

"Continuity" refers either to a "closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." Corley, 142 F.3d at 1049.

Closed-ended continuity may be demonstrated through a series of related predicates extending over a substantial period of time. Vicom, 20 F.3d at 779-780. Helpful factors in determining whether a closed-ended pattern exists include "the number and variety of predicate acts and the length of time over which they were committed, the number of victims, the presence of separate schemes and the occurrence of distinct injuries." Id. at 780 (citing Morgan, 804 F.2d at 975).

Open-ended continuity, on the other hand, is where past conduct "by its nature projects into the future with a threat of repetition." Midwest Grinding Co., Inc. v. Spitz, 976 F.2d 1016, 1023 (7th Cir. 1992). Such a threat of repetition exists under any one of the following three circumstances: 1) there is a specific threat of repetition; 2) the predicates are a regular way of conducting an ongoing legitimate business; or 3) the predicates can be attributed to a defendant operating as part of a long-term association existing for criminal purposes. Vicom, 20 F.3d at 782. A pattern of racketeering that is open ended satisfies the continuity prong regardless of its brevity. Id. See also Midwest Grinding, 976 F.2d at 1023.

Here, Plaintiff has alleged several schemes of predicate acts involving mail fraud, wire fraud, theft from interstate shipment, and extortion. (2nd Am. Complt. ¶ 67-113.) Moreover, the different schemes directed against Ms. Chen, Mr. Petrowiak, and the other individual customers/victims discussed in the complaint are interrelated because they all involve the same type of misconduct – schemes of bait and switch. Id. (acts involving the same type of misconduct satisfy RICO relationship test). Each transaction between the members of the Enterprise and a customer/victim is an independent scheme made up of predicate acts of fraud, extortion, and/or theft. Each scheme, in turn, is related to the other schemes through their similar modis operandi: the members of the Enterprise made fraudulent representations regarding the "not to exceed" cost of the move or other misrepresentations about the weight or timing of the

shipments to induce the customers/victims to hire them for their moves and surrender their possessions to them. At the moment when the customers/victims were most vulnerable – generally after the members of the Enterprise had taken possession of the customer's/victim's property and moved them across country – the members of the Enterprise demanded significantly more money for the move, threatening not to unload, not to deliver, and, in Ms. Chen's case, to auction her property if she did not pay the inflated price. The tactics used by the members of the Enterprise in each of these schemes consist of the same type of misconduct – bait and switch – with similar victims and similar injuries. Thus, the acts are clearly related and satisfy the RICO relationship requirement.

Additionally, the Enterprise's various schemes demonstrate both closed-ended and open-ended continuity. The acts occurred over at least six years, involved at least five victims, and a variety of predicates ranging from fraud to theft to extortion. (2nd Am. Complt. ¶¶ 67-113.) Even if the members of the Enterprise ceased their racketeering activities today (and there is no evidence that they have), the allegations in the Second Amended Complaint describe the type of long-term albeit closed-ended criminal operation that RICO is designed to combat. See Midwest Grinding, 976 F.2d at 1023-1025.

Furthermore, every indication is that the predicate acts described in the Second Amended Complaint have not ceased, but rather are Mayflower's regular way of doing business. Mayflower itself maintains that these practices have been going on for scores of years, are approved by the federal government, and expressly permitted by the tariff under which they operate. (2nd Am. Complt., ¶ 84.) Without having had the opportunity to take any discovery on this issue, Plaintiff has uncovered 4 distinct instances in which the defendants used similar bait and switch tactics – the most recent occurring in June and July of 1999. Consistent with its own

insistence that such practices are permissible under their federal tariff and ongoing, it is clear that Mayflower and the other members of the Enterprise regularly do business through such predicate acts and that they will continue to do so in the future. Accordingly, Plaintiff meets the continuity requirement under either a closed-ended or open-ended analysis.

Plaintiff states a claim under RICO § 1962(c) and should be given leave to file her Second Amended Complaint.

C. Plaintiff States a Claim under § 1962(d)

RICO § 1962(d) provides that "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U.S.C. § 1962(d).

Analysis of a RICO conspiracy under § 1962(d) follows the well-established principles of conspiracy law generally: "(1) an individual can be convicted of a conspiracy even if he 'does not agree to commit or facilitate every part of the substantive offense'; (2) an individual who agrees with others to pursue a shared criminal objective may be held liable for the acts of the other conspirators; (3) such an individual may be held liable for the conspiracy even if he does not perpetrate the crime himself but provides support to those who do; and (4) an individual may be held liable for a conspiracy 'even though he was incapable of committing the substantive offense.'" Goren, 156 F.3d 721, 731 (7th Cir. 1998) (citing Salinas v. United States, 522 U.S. 52, 63-64, 118 S. Ct. 469, 476-477, 139 L. Ed. 2d 352 (1997)). Thus, to be a conspirator a defendant must "intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." Id.

In the RICO context, a Plaintiff states a viable claim under § 1962(d) by alleging (1) that each defendant agreed to facilitate the activities of the operators or managers of a RICO

enterprise, and (2) that each defendant further agreed that someone would commit at least two predicate acts to accomplish those goals. Brouwer v. Raffensperger, Hughes & Co., 199 F.3d 961, 965-967 (7th Cir. 2000); Goren, 156 F.3d at 732.

Here, Plaintiff has alleged that Mayflower was the manager of the Enterprise and therefore liable for the substantive RICO violation under § 1962(c). (2nd Am. Complt. ¶ 64.) The allegations in the proposed Second Amended Complaint include more than two predicate acts (wire fraud, mail fraud, theft and extortion) in furtherence of the Enterprise's schemes. Since Mayflower actively participated in, or was complicitious with, these predicate acts, it is also liable for its participation, as a member of the Enterprise, in the conspiracy to engage in this pattern of racketeering.

IV. CONCLUSION

Taking all well-pleaded facts as true and drawing all inferences in her favor, Plaintiff succeeds in stating a claim for a violation of RICO under both §§ 1962(c) and (d). Accordingly her claim is not futile since valid amendments adding new legal theories of recovery are presumed to be permissible. Plaintiffs motion should be granted.

WHEREFORE, for the foregoing reasons Plaintiff Angie Chen respectfully requests that this Honorable Court grant her leave to amend her pleadings and file instanter the Second Amended Complaint attached hereto.

Dated: December 8, 2000

Respectfully submitted,

ANGIE CHEN

BY: _____
One of Her Attorneys

José A. Isasi, II
Carey L. Bartell
Sachnoff & Weaver, Ltd.
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EXHIBIT
A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ANGIE CHEN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 99 C 6261
	)	
MAYFLOWER TRANSIT, INC.,	)	Magistrate Judge Brown
	)	
Defendant.	)	

SECOND AMENDED COMPLAINT

Plaintiff, Angie Chen, by and through her attorneys, Sachnoff & Weaver, Ltd., and for her Second Amended Complaint against Defendant Mayflower Transit, Inc., alleges as follows:

PARTIES

1. Plaintiff is a U.S. citizen and resides in Chicago, Illinois.

2. Defendant Mayflower Transit, Inc. ("Mayflower") is a corporation incorporated under the laws of the State of Missouri and is a motor carrier engaged in the business of transporting household goods. Mayflower has its headquarters and principal place of business in Fenton, Missouri and transacts business in Cook County, Illinois.

JURISDICTION

3. Federal question jurisdiction exists in this Court for Count I - Breach Of Contract (Bill Of Lading) and for Count II - Conversion, pursuant to 28 U.S.C. §1331, since Plaintiff's claim arises in part under 49 U.S.C §14706 (the Carmack Amendment). Jurisdiction exists for Plaintiff's claims for negligent and intentional infliction of emotional distress under the doctrine of pendant jurisdiction. Federal question jurisdiction exists for Plaintiff's Count V – Racketeer

Influenced Corrupt Organizations Act, since Plaintiff's claim arises under 18 U.S.C. §1961, *et seq.*

4. Jurisdiction for all claims also exists pursuant to 28 U.S.C. § 1332, since diversity exists between Plaintiff and Defendant, and the total damages sought, exceeds $75,000.

VENUE

5. Many of the events giving rise to this claim occurred, and the *res* which is the subject of this Complaint is located, within this District; thus, venue in this Court is proper pursuant to 28 U.S.C. §1391(a) and (b)(2).

FACTUAL BACKGROUND TO ALL COUNTS

6. Plaintiff is a former resident of Atlanta, Georgia. In May 1999, she began making arrangements to move to Chicago, Illinois. In connection with this move, Plaintiff contacted Admiral Moving and Storage, Inc. ("Admiral"), a disclosed agent of Mayflower, to discuss using Admiral's and Mayflower's moving services.

7. Admiral is a corporation incorporated under the laws of the State of Georgia and is a motor carrier engaged in the business of transporting household goods. Admiral's headquarters and principal place of business are located in Atlanta, Georgia. At all times described herein, Admiral's acts were related to the performance of household goods transportation services and were within the actual or apparent authority conveyed upon it by Mayflower.

8. On June 4, 1999, John Berkes, an employee of Admiral acting within the scope of his apparent authority, arrived at Plaintiff's residence in Atlanta for the purpose of giving Plaintiff an estimate of Mayflower's fee to move her possessions to Chicago.

9. Berkes represented to Plaintiff that Mayflower's fee for the move was "Guaranteed not to exceed" $1,741.89. This price guarantee is documented in the "Estimate/Order for Service,"

which was signed by both Plaintiff and Berkes on June 4, 1999. (*See* Exhibit "A" attached to original Complaint).

10. Berkes also represented to Plaintiff that there was a possibility her final charge for the move would actually be less than $1,741.89, if the actual weight of her shipment was less than the estimated weight.

11. The "Estimate/Order for Service" reflected that the agreed pick-up dates were June 10 through June 14, 1999, and the agreed delivery dates were June 15 through June 21, 1999.

12. On or about June 8, 1999, Plaintiff received a letter from "Admiral-Mayflower" sent through the U.S. mail and confirming the pick-up and delivery dates as indicated in the Estimate/Order for Service. This letter also stated, in pertinent part: "payment is due at the time of delivery and can be made in cash, certified check or money order, or a major credit card, or direct billing to company with approved letter of authorization and approved credit check." (Emphasis added.) (*See* Exhibit "B" attached to original Complaint.)

13. Relying upon the Admiral-Mayflower letter, Plaintiff planned to use her credit card to cover her moving expenses.

14. At no time between June 4, 1999 and June 30, 1999, did anyone from Admiral notify Plaintiff that her major credit card would not be an acceptable method of payment.

15. Also on or about June 8, 1999, along with the letter described above, Plaintiff received a typewritten copy of the "Estimate/Order for Service" from "Admiral-Mayflower" sent through the U.S. mail and purporting to be identical to the handwritten "Estimate/Order for Service" she had received from John Berkes on June 4, 1999. Sometime after Admiral's agents took possession of her goods, Plaintiff signed the typewritten "Estimate/Order for Service," believing it to be identical to the handwritten version she had reviewed with Mr. Berkes.

16. On June 10, 1999, two employees from Admiral loaded Plaintiff's furniture and other household goods, including Plaintiff's study materials necessary for her preparation for the Illinois bar examination, onto its truck. After the truck was loaded, these employees gave Plaintiff a Bill of Lading.

17. The Bill of Lading indicated that the $1,741.89 was a "binding estimate." The Bill of Lading, like the Estimate/Order for Service, also indicated that the agreed pick-up dates were June 10 through June 14, 1999, and that the agreed delivery dates were June 15 through June 21, 1999. (*See* Exhibit "C" attached to original Complaint).

18. Admiral transported Plaintiff's furniture and household goods to Admiral's local warehouse, where Plaintiff's property was to be picked up and transported to Chicago by a driver employed by Century Moving and Storage, Inc. ("Century"), a disclosed agent of Mayflower.

19. Century is a corporation incorporated under the laws of the State of Illinois and is a motor carrier engaged in the business of transporting household goods. Century's headquarters and principal place of business are located in Lombard, Illinois. At all times described herein, Century's acts were related to the performance of household goods transportation services and were within the actual or apparent authority conveyed upon it by Mayflower.

20. Plaintiff arrived at her new residence in Chicago on June 11, 1999.

21. Between June 11 and June 21, 1999, Plaintiff made several calls from Chicago, Illinois to Admiral in Atlanta, Georgia and to Mayflower's Customer Service "1-800" number in Fenton, Missouri to inquire about the status of her delivery. She received assurances from both Admiral and Mayflower that her property would be delivered by June 21, 1999.

22. On June 21, 1999, when Plaintiff's furniture and household goods had not been delivered, Plaintiff again placed a telephone call from Chicago to Mayflower's Customer Service

number in Missouri. Mayflower's customer service representative, Corrine Swenson, told Plaintiff that her shipment would be late, but could not provide Plaintiff with a new delivery date. Swenson explained that she could not provide Plaintiff with a new delivery date because the driver responsible for transporting Plaintiff's property to Chicago was unwilling to provide a new delivery date until June 23, 1999.

23. Jim Macak, the driver assigned to transport Plaintiff's property to Chicago was an employee of Century Moving and Storage, Inc.

24. On June 23, 1999, Plaintiff again placed a telephone call from Chicago to Mayflower's Customer Service number and was informed by Swenson that her new delivery date was June 30, 1999.

25. By June 30, 1999, Plaintiff had incurred more than $1,100 in hotel costs and meals as a result of Mayflower's and/or its agents' failure to deliver her property by the agreed delivery date, June 21, 1999.

26. Mayflower has a delay compensation policy, which provides for compensation to a customer of 100% of reasonable hotel costs, as well as 50% of food costs, not including alcohol or tobacco, incurred by the customer as a result of Mayflower's or its agents' untimely delivery of the customer's shipment.

27. The Mayflower agents responsible for the delay in the delivery of Plaintiff's property were Century and/or Admiral.

28. On June 21, 1999, Swenson told Plaintiff by telephone that she could avail herself of Mayflower's delay compensation policy.

29. On June 28, 1999, Plaintiff placed a telephone call to Mayflower's Customer Service number and spoke with a Customer Service Representative. Plaintiff requested a telephone call

from the driver who was transporting her property to Chicago. However, neither the driver nor anyone from Century or Mayflower called Plaintiff on June 28 or June 29, 1999.

30. At approximately 9:00 a.m. on June 30, 1999, Plaintiff again placed a telephone call to Mayflower's Customer Service number and spoke with a Customer Service Representative named Matt, at extension 4036. Once again, Plaintiff requested a telephone call from the driver transporting her property.

31. Shortly thereafter, Ann Vineyard, an employee and agent of Century acting within the scope of her apparent authority and authorized by Century to contact shippers, called Plaintiff by telephone. Ms. Vineyard asked whether Plaintiff had payment ready in the full amount of $1,741.89 in cash or certified funds. Plaintiff replied that she would be paying by credit card.

32. During this call, Ms. Vineyard stated that she could not accept a credit card and insisted that cash or certified funds must be tendered to the driver before she would instruct the driver to unload the truck. Plaintiff indicated that she would have difficulty raising such a large sum of cash on such short notice, but nevertheless indicated that she would attempt to raise the cash before the driver arrived.

33. Prior to Ms. Vineyard's telephone call on June 30, 1999, Plaintiff was not informed by Mayflower or any of its agents that a credit card would not be accepted for payment.

34. Ms. Vineyard knew that Plaintiff had been without her furniture and household goods since June 10, 1999. She also knew as of June 30, 1999, that Century was already nine (9) days late with Plaintiff's shipment. She further knew that Plaintiff had incurred more than $1,100 in hotel costs due to Century's delay in making the delivery. She also was informed by Plaintiff that included in the shipment were Plaintiff's study materials necessary for her preparation for the Illinois bar examination in July, 1999.

35. Ms. Vineyard either knew or reasonably should have known that in the event Plaintiff submitted a claim for delay compensation to Mayflower, Century would be responsible for all or most of the funds required to reimburse Plaintiff for her hotel costs.

36. Century's driver arrived at Plaintiff's residence on June 30, 1999 at about 11:00 a.m. Shortly thereafter, Ms. Vineyard informed Plaintiff over the telephone that Plaintiff was required to tender the full amount of $2,556.69 in cash or certified funds before the driver would unload the truck.

37. This $2,556.69 figure is nearly fifty percent above the $1,741.89 "guaranteed not to exceed" estimate which Plaintiff received from Admiral on June 4, 1999.

38. Ms. Vineyard claimed that the additional $814.80 was to cover "additional services" such as carrying Plaintiff's goods a distance of "more than four blocks" between the truck and Plaintiff's residence.

39. Notwithstanding Ms. Vineyard's contentions, the delivery truck was parked at the northwest corner of Broadway and Melrose Streets, which is less than one (1) block away from Plaintiff's residence at 511 West Melrose Street.

40. Ms. Vineyard also claimed that the unloading would take "eight to ten hours," and that after 4:00 p.m. Plaintiff would be charged for overtime.

41. Notwithstanding Ms. Vineyard's contentions, at the time that Plaintiff's property was picked up in Atlanta, Georgia on June 10, 1999, it was loaded in less than four (4) hours.

42. Ms. Vineyard threatened Plaintiff over the telephone that, if she did not immediately come up with $2,556.69 in cash or certified funds, and sign a document stating that she had agreed to pay for the additional services, her property would be put into storage and that Plaintiff would incur thousands of dollars more in various fees, such as warehouse handling, storage, and

re-delivery fees. Ms. Vineyard also warned Plaintiff that if Century did not receive payment, Century would dispose of Plaintiff's property by auction in 30 days.

43. Although Ms. Vineyard demanded a fee in great excess of Plaintiff's "guaranteed" and "binding" estimate, at no time did Plaintiff refuse to make payment for the return of her property. Plaintiff repeatedly offered to make payment by major credit card.

44. Plaintiff pleaded with Ms. Vineyard to accept a major credit card, in accordance with Admiral's letter, but Ms. Vineyard repeatedly refused to allow Plaintiff to pay by credit card.

45. Ms. Vineyard also failed to offer an explanation as to why Century failed to honor Admiral's letter which established a "major credit card" as an acceptable method of payment.

46. At no time did Ms. Vineyard or any other agent of Mayflower attempt to process Plaintiff's credit card to cover Mayflower's delivery.

47. Also on June 30, 1999, Plaintiff placed another telephone call to Mayflower's Customer Service Line and spoke with Corrine Swenson. Plaintiff told Ms. Swenson that Century's driver was refusing to unload her belongings until payment was made in cash and again offered to pay by credit card. Ms. Swenson telephoned Admiral to inquire if they would process the Plaintiff's credit card; Admiral refused. Ms. Swenson then told Plaintiff that she would have to come up with the entire payment by cash, cashier's check, or money order, or the driver would not unload her belongings.

48. While Plaintiff frantically attempted to raise thousands of dollars in cash, Ms. Vineyard assessed against Plaintiff an additional $84.50 for the driver's waiting time, bringing Mayflower's total demand for delivery to $2,641.19.

49. At about 2:30 p.m., when Plaintiff was unable to tender $2641.19 in cash or certified funds, Ms. Vineyard sent the driver away with Plaintiff's property.

50. Ms. Vineyard then informed Plaintiff that Century was putting her property in storage at Century's facility in Lombard, Illinois, and that Plaintiff would immediately begin to incur thousands of dollars in storage, warehouse handling, and re-delivery fees.

51. Ms. Vineyard offered Plaintiff a promise to not auction Plaintiff's property in 30 days if Plaintiff paid her $2,481.64 for storage costs. According to Ms. Vineyard she would accept this $2,481.64 by credit card; however, Plaintiff would still be required to tender over $2,500 in cash or certified funds to cover the moving costs. Plaintiff declined this offer.

52. Ms. Vineyard then told Plaintiff that she would need to tender more than $5,122.83 in order to recover her property.

53. Finally, Ms. Vineyard claimed that the owner of Century was going to "give [Plaintiff] a break," and make delivery of Plaintiff's property on July 6, 1999, on the condition that on July 1, 1999, the very next day, Plaintiff appear at Century's office and tender $3,981.89 (more than double the Binding Estimate) in cash or certified funds to Ms. Vineyard.

54. At all relevant times, Ms. Vineyard was acting as an agent of both Century and Mayflower, and within the apparent scope of the authority conveyed upon her by Century and Mayflower.

55. Plaintiff demanded the return of her property; but Mayflower has failed and refused to return Plaintiff's property until the initiation of this action.

56. Mayflower unlawfully possessed Plaintiff's property and refused to make delivery of Plaintiff's property for the "guaranteed not to exceed" Estimate amount of $1,741.89. Mayflower also assessed fees for storage of Plaintiff's goods.

57. Because of Mayflower's actions and the actions of its agents, Plaintiff has incurred specific and general damages, including deprivation for more than three months of virtually all of her material belongings, great inconvenience, severe emotional distress, and mental anguish.

FACTUAL BACKGROUND TO COUNT V (RICO)

The Enterprise

58. Mayflower is authorized by the federal government to provide interstate shipping of household goods pursuant to the terms of a published federal tariff known as the Household Goods Carrier Bureau's Tariff.

59. Mayflower contracts with regional shipping companies that act as local disclosed agents of Mayflower and provide marketing, sales, pick-up, hauling, storage, and delivery services pursuant to Mayflower's authority. Mayflower requires that its local agents comply with written guidelines regarding line haul charges, discounts, additional service charges, and transit and delivery standards. Because Mayflower's local agents are authorized to operate in interstate shipping only pursuant to the authority of Mayflower's tariff, they must abide by the rules established both by the tariff and by Mayflower.

60. Mayflower does not provide any packing and unpacking or hauling services directly to customers.

61. Mayflower's local agents, in turn, contract with individual shippers to transport household goods across interstate lines. If the local agent who books the order is not able or does not wish to haul the goods itself, it transports them to a local warehouse and places the order into Mayflower's central database for another local agent to pick up for hauling and/or delivery to the final destination. All communications between local agents regarding booking, hauling, storage,

and delivery of goods are overseen by Mayflower and take place through Mayflower's central database and computer system using interstate wires.

62. Mayflower, Century, Admiral, Union Van Lines, Inc. (a disclosed agent of Mayflower operating in Illinois), W.J. Donovan, Inc. (a disclosed agent of Mayflower operating in Massachusetts), and other disclosed agents of Mayflower, associate together on an ongoing basis and are joined in the common goal of marketing, booking, packing, hauling, storing, and delivering interstate shipments of household goods (the "Enterprise").

63. Fees for moving services conducted by the Enterprise are taken in by Mayflower and distributed among various members of the Enterprise.

64. Mayflower participates in and/or has agreed to facilitate the operation and management of the Enterprise by issuing guidelines on pricing, discounts, and standards for transit and delivery; providing a means of centralized communication between the other members of the Enterprise (i.e., the disclosed local agents); maintaining a customer service line for the Enterprise's interstate shipping customers; approving credit transactions; overseeing and directing operations; taking in and distributing all revenues; and providing the authority under which it and the other members of the Enterprise operate.

65. Admiral and Century each participate in and/or have agreed to facilitate the operation and management of the Enterprise by booking shipments for the Enterprise, issuing estimate orders for service, determining what discounts to apply to each shipper's order, and performing services including but not limited to packing, hauling, loading and unloading, storing, and other services comprising the operations of the Enterprise.

66. The Enterprise engages in and affects interstate commerce by providing interstate shipping services of household goods to individual and institutional shippers, at times contracting to provide as many as 400 interstate moves or more per day.

Racketeering Activity Relating to the Plaintiff

67. The Enterprise has engaged in predicate acts of mail fraud (in violation of 18 U.S.C. § 1341), wire fraud (in violation of 18 U.S.C. § 1343), theft from an interstate shipment (in violation of 18 U.S.C. § 659), and extortion/robbery (in violation of 18 U.S.C. § 1951).

68. Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income by reason of the Enterprise's racketeering activity.

Mail and Wire Fraud

69. As more fully described in paragraphs 6 through 57, Admiral, Century, and/or Mayflower executed a scheme to induce Plaintiff to enter into a contract for interstate shipping services by falsely promising and misrepresenting that the cost of her move was "guaranteed not to exceed" the $1,741.89 specified on the Estimate/Order for Service.

70. In furtherance of their scheme, Admiral, Century, and Mayflower made use of the U.S. mail and interstate wires as more fully described in paragraphs 12, 15, 21, 22, 24, 28, 29, 30, 47, and 61.

71. As demonstrated by their conduct, Admiral, Century, and Mayflower had a specific intent to defraud Ms. Chen either by devising or participating in the scheme to induce her to enter into a contract for shipping services by promising that the cost of her move was "guaranteed not to exceed" the estimate, misrepresenting that she would be permitted to pay by credit card, taking possession of her household goods, and then refusing to release them without payment of more than twice the original estimate in cash.

72. As a result of the Enterprise's mail and wire fraud, Ms. Chen suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income.

Theft From Interstate Shipment

73. Plaintiff was willing and able to pay the charges for her move by major credit card on June 30, 1999.

74. Mayflower and other members of the Enterprise, wrongfully and without justification or reason, refused to accept payment by major credit card.

75. Mayflower and/or other members of the Enterprise refused to deliver and relinquish possession of Plaintiff's property on the pretext that Plaintiff could not make proper payment.

76. Mayflower and/or other members of the Enterprise unlawfully took, carried away, and/or obtained Plaintiff's goods by fraud or deception with the intent to convert such goods to their own use.

77. Plaintiff's goods were unlawfully taken by Mayflower and/or other members of the Enterprise from Century's moving truck after having been placed in possession of a common carrier moving in interstate commerce.

Extortion/Robbery

78. Mayflower and/or Admiral induced the Plaintiff to contract with the Enterprise for moving services by giving her a "guaranteed not to exceed" estimate for the cost of her move.

79. After loading her household goods onto their trucks, Mayflower and/or Admiral gave the Plaintiff a bill of lading that did not contain the "guaranteed not to exceed" term from the original Estimate/Order for Service.

80. Upon arriving, 9 days late, with her goods in Chicago, an agent of Mayflower and/or Century, acting within the apparent scope of her authority, told Plaintiff that Century and/or

Mayflower would not unload Plaintiff's goods and that they would auction off her property within 30 days if she did not pay more than twice the "guaranteed not to exceed" estimate.

81. Notwithstanding the fact that Plaintiff attempted to pay the amounts demanded by major credit card, Mayflower and/or Century drove off without unloading Plaintiff's goods and retained them for more than three months.

82. The acts of Mayflower and other members of the Enterprise affected or attempted to affect interstate commerce by extorting from the Plaintiff more than twice the "guaranteed not to exceed" cost of her move from Atlanta, Georgia to Chicago, Illinois through wrongful use of threatened force against her property.

Pattern of Racketeering Activity

83. Predicate acts such as mail and wire fraud are a regular method through which the Enterprise operates.

84. The members of the Enterprise used "not to exceed" estimates and other forms of misrepresentation for scores of years to induce customer/victims into hiring members of the Enterprise and surrendering to them possession of their goods for shipment. Then the Enterprise springs additional charges upon the customer/victim, exceeding the "not to exceed" estimates, and often refusing to deliver or release their goods until payment has been made. In addition, Mayflower claims that such misleading practices have been approved by the federal government.

85. The members of the Enterprise have knowledge of the use of "not to exceed" estimates and other tactics that are used to induce customer/victims into signing contracts with a member of the Enterprise for interstate shipping and each has agreed that someone within the Enterprise would commit at least two predicate acts to accomplish the goals of the Enterprise.

Craig J. Pietrowiak

86. On or about January 4, 1999, Century contracted with Craig J. Pietrowiak, then a resident of the state of Illinois, to transport his household goods from Vernon Hills, Illinois to Burbank, California. Several days prior to the scheduled move, Mr. Pietrowiak contacted Chris Dunne, an agent of Century acting within the scope of his apparent authority, by telephone to inquire about the cost of the move. Mr. Pietrowiak had already received an estimate for his move from another moving company, and Mr. Dunne told him that, because he already had an estimate, Mr. Dunne did not need to see his belongings in order to give him Century/Mayflower's estimated cost.

87. Shortly before January 4, 1999, Mr. Dunne sent Mr. Pietrowiak via the U.S. mail a "not to exceed" estimate of $1685.00 for the cost of his move. Mr. Dunne told Mr. Pietrowiak "off the record" that there was no need to purchase insurance because it was a waste of money. Mr. Dunne knew and intended that Mr. Pietrowiak would rely on his statements in deciding which moving company to hire.

88. Mr. Pietrowiak signed the estimate and returned it to Century through the U.S. mail.

89. On or about January 4, 1999, Century's agents loaded Mr. Pietrowiak's goods onto a truck and drove off. That same day Mr. Pietrowiak began his own trip to California, planning to meet Century's driver, or another member of the Enterprise, in California along with his possessions.

90. On information and belief, on or about January 5, 1999, while on the road from Illinois to California, Mr. Pietrowiak received another telephone call from Mr. Dunne, who told him that the cost of his move would be $2609.00 – exceeding his "not to exceed" estimate by more than half.

91. Mr. Pietrowiak agreed to pay the increased cost of the move so that Century or another member of the Enterprise in Los Angeles would deliver his goods. Upon inspection of his goods, however, Mr. Pietrowiak discovered that many of his belongings were missing. He filed a claim with Century and Mayflower, but was told that Century and Mayflower were not liable because, as Mr. Dunne had suggested, Mr. Pietrowiak had not purchased insurance.

92. Century and Mayflower, with specific intent to defraud, used the U.S. mail and interstate wires in furtherance of its scheme to fraudulently induce Mr. Pietrowiak with a phony "not to exceed" estimate into contracting with it for interstate shipping services and not purchasing appropriate insurance to cover the value of his belongings.

Kate Rice

93. On or about June 13, 1994, Kate Rice, then a resident of the state of Illinois, contacted Union Van Lines Inc., d/b/a Union-Mayflower, an Illinois corporation and member of the Enterprise ("Union"), to inquire about the cost of moving her possessions from Chicago to New York City, New York. Ms. Rice spoke with Allan H. Levy, a sales consultant and agent of Union acting within the scope of his apparent authority.

94. Over the telephone, Mr. Levy gave Ms. Rice an estimate that her moving costs would be between $1,500 and $1,800 less a 35% discount. Mr. Levy did not inform Ms. Rice that there would be any additional charges. Based upon Mr. Levy's representations and cost estimate, Ms. Rice entered into a contract with Union and Mayflower for the interstate shipment of her goods.

95. On or about June 23, 1994, Union picked up Ms. Rice's goods.

96. On or about June 24, 1994, Mr. Levy again telephoned Ms. Rice and informed her that the cost of her move would be $5,146.39 – more than three times the estimate he had

originally given her. Ms. Rice was told that Union would not deliver or release her goods without payment in full of the increased price.

97. Mr. Levy on behalf of the Enterprise, intentionally grossly underestimated the cost of Ms. Rice's move in a scheme to induce her to enter into a contract and surrender her goods into Union's possession. Union and Mayflower then refused to release her goods until she agreed to pay more than three times his original estimate. Mr. Levy, Union and Mayflower used interstate wires as described above in furtherance of this scheme.

Dr. and Mrs. Gerald and Minna Aronoff

98. In October 1994, Dr. and Mrs. Gerald and Minna Aronoff, then residents of Massachusetts, contacted W.J. Donovan, Inc. ("Donovan"), a local moving company and member of the Enterprise, to obtain an estimate for moving services to transport their household goods from Massachusetts to Charlotte, North Carolina.

99. On or about October 18, 1994, Mr. Embree, an agent of Donovan acting within the scope of his apparent authority, provided the Aronoffs with an estimate of the cost of the move including insurance, hauling, packing, and unpacking.

100. Dr. Aronoff made particular inquiry about the timing of the move because he was planning to open his new medical practice in North Carolina on October 24, 1994. Embree represented to Dr. Aronoff that Donovan and Mayflower would use the largest sized trucks that would be sufficient to carry all the goods from his home, office, and storage facility in one truck, that the companies were highly skilled at coordinating moves, and that because of their equipment and superior services they would be able to complete the move by October 22, 1994. Relying on Embree's representations regarding the timeliness of his delivery, the Aronoffs agreed to engage Mayflower and Donovan for the move.

101. After making these representations, Embree sent the Aronoffs a written Estimate/Order Form and a Bill of Lading for the move on or about October 18, 1994, on information and belief, through the U.S Mail.

102. Contrary to Donovan's and Mayflowers' representations, the move was not completed in a timely fashion and was not completed in one haul. Rather, Donovan arrived at the Aronoff's home on October 20, 1994 with a truck that was too small to hold all their possessions, loaded up a portion of the Aronoffs' possessions from their home and Dr. Aronoff's office, but neglected to load the possessions from their storage facility.

103. On or about October 21, 1994, after Donovan took possession of the Aronoffs' possessions, and while the Aronoff's were en route to North Carolina, Dr. Aronoff received a telephone call from Donovan indicating that, contrary to the terms of the contract, no one would be present upon delivery to provide unpacking services. Despite Dr. Aronoff's disability, the Aronoffs were forced to unpack the first wave of their possessions themselves; upon doing so they discovered that many of their belongings were broken, damaged, or missing.

104. On or about October 21, 1994, Dr. Aronoff contacted John Riddle, an agent of Donovan and Mayflower acting within the scope of his apparent authority, by telephone. Riddle told Dr. Aronoff that despite the second trip that was required from Massachusetts, the move would be completed at the previously agreed upon price.

105. On or about February 7, 1995, Mr. Scott, an agent of Donovan and Mayflower acting within the scope of his apparent authority, sent the Aronoffs' attorney, Marvin Finn, a letter through the U.S. mail. The letter said that the goods Donovan had neglected to pick up from the Aronoffs' storage facility in Massachusetts would finally be delivered on February 14,

1995. The letter further demanded additional payment for the delivery above and beyond the price quoted for the original move.

106. Dr. Aronoff cancelled all his medical appointments for February 14, 1995 to be present for the delivery of his belongings.

107. On or about February 10, 1995, Dr. Aronoff received a telephone call from the driver hauling the remainder of his belongings. The driver told Dr. Aronoff that his delivery would be made on February 13 instead of February 14 as previously scheduled. Dr. Aronoff informed the driver that he would not be available to receive the goods on February 13 because of commitments to his medical practice. The driver suggested that Dr. Aronoff contact Mayflower directly to resolve the problem.

108. That same day Dr. Aronoff contacted Mayflower's office directly by telephone and explained that he would not be available on February 13, 1995 because the delivery had been scheduled in writing for the following day. The Mayflower representative informed him that his goods were being unloaded at a Mayflower agent's warehouse and that he would be required to pay additional storage costs before the goods would be redelivered.

109. On or about February 14, 1995, Mr. Scott again contacted Dr. Aronoff by telephone and told him that Mayflower would redeliver his belongings on February 17, 1995. Once again, Dr. Aronoff cancelled all his medical appointments for February 17 to be present at the delivery.

110. On or about February 16, 1995, Mr. Scott once against contacted Dr. Aronoff by telephone and told him that the delivery of his goods for the following day had been cancelled.

111. From February until at least October 1995, Dr. Aronoff made repeated demands that his goods be delivered. Authorized agents of the members of the Enterprise repeatedly refused,

wrongfully maintaining possession of the Aronoff's belongings, and demanding additional payment.

112. Donovan and Mayflower intentionally used the U.S. mail and interstate wires in furtherance of a scheme to fraudulently induce the Aronoffs into contracting for interstate shipping services based on their misrepresentations regarding the equipment to be used, services to be rendered, and timeliness of the shipment.

113. In addition, on information and belief, Mayflower and other members of the Enterprise have used the U.S. mail and/or interstate wires in furtherance of additional schemes to induce other individual customers/victims to contract with them for moving services, only to surprise them with additional charges after they had surrendered their goods into the possession of a member of the Enterprise. Information relating to such additional schemes and victims is exclusively within the Defendant's control.

COUNT I

BILL OF LADING - BREACH OF CONTRACT

114. Paragraphs 6 through 113 are incorporated herein by reference.

115. Mayflower entered into a valid contract with Plaintiff.

116. This contract is embodied in the Estimate/Order for Service, Admiral's confirmation letter, and the Bill of Lading. (Exhibits "A", "B" and "C" to the original Complaint).

117. Admiral's confirmation letter to Plaintiff indicated that Plaintiff could choose to pay with "cash, certified check or money order, or major credit card . . . . "

118. Admiral sent, and Plaintiff received, this confirmation letter in advance of shipment before her property was picked up in Atlanta, Georgia.

119. Plaintiff performed all conditions of the contract as she was available to accept delivery and willing and prepared to make payment by credit card, which she repeatedly offered to do when the truck carrying her property finally arrived at her residence on June 30, 1999.

120. Mayflower breached the contract by failing to make delivery by June 21, 1999.

121. Mayflower breached the contract by demanding a fee in excess of $1,741.89.

122. Mayflower breached the contract by refusing to accept a major credit card from Plaintiff.

123. Mayflower breached the contract by refusing to deliver Plaintiff's property for a fee not in excess of $1,741.89.

124. Mayflower is liable to Plaintiff for its failure to deliver Plaintiff's property pursuant to, *inter alia*, 49 U.S.C. §102, which provides:

125. If a bill of lading has been issued by carrier or his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation and commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transit or (b) the holder of an order bill, who is given value in good faith, relying upon the description therein of the goods, or upon the shipment being made upon the date therein shown, for damages caused by the non-receipt by the carrier of all or part of the goods upon or prior to the date therein shown, ...

126. Mayflower is liable for the actual loss of Plaintiff's property pursuant to, *inter alia*, 49 U.S.C. §14706 (the "Carmack Amendment" to the Interstate Commerce Act, previously 49 U.S.C. §11707), which provide in relevant part:

127. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States ... when transported under a through bill of lading ...

128. Mayflower's actions resulted in Plaintiff's injury as described in Paragraph ___.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

(a) Award for damages for the actual loss of Plaintiff's property in an amount to be determined by a jury;
(b) Award for punitive damages for Mayflower's improper demands for additional payment under the bill of lading and refusal to accept credit card payment for any amount under the bill of lading;
(c) Award for damages in the amount not less than $1,100.00, representing 100% of Plaintiff's hotel bills and 50% of Plaintiff's meals for the time period of June 22, 1999 through June 30, 1999, and additional costs incurred since June 30, 1999;
(d) Award for all other incidental and consequential damages which resulted from defendant's breach of contract including, but not limited to, loss of income.
(e) Award for attorneys' fees and costs; and
(f) For such and further relief as the Court deems just and proper.

COUNT II

CONVERSION

129. Paragraphs 6 through 128 are incorporated herein by reference.

130. Plaintiff was willing and able to pay Mayflower the charges for her move, by major credit card, on June 30, 1999.

131. Mayflower and/or its agents, wrongfully and without justification or reason, refused to accept payment by major credit card.

132. Mayflower and/or its agents, on the pretext that Plaintiff could not make proper payment, refused to deliver and relinquish possession of Plaintiff's property.

133. Mayflower and/or its agents wrongfully assumed control and dominion over Plaintiff's property.

134. Plaintiff had the right to immediate possession of her property.

135. Plaintiff demanded the return of her property.

136. Mayflower threatened to auction Plaintiff's goods in order to obtain payment for the shipment.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

(a) An award for damages based upon defendant's wrongful deprivation of plaintiff's property;
(b) Awarding attorneys' fees and costs; and
(c) For such and further relief as the Court deems just and proper.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

137. Paragraphs 6 through 136 are incorporated herein by reference.

138. Mayflower and/or its agents communicated to Plaintiff the threat to retain possession of Plaintiff's property and to dispose of Plaintiff's property through auction if Plaintiff did not pay the monies demanded by Mayflower.

139. These threats were made with the intent to cause Plaintiff to surrender a cash amount in great excess of $1,741.89. The ultimate amount which Mayflower threatened to collect from Plaintiff was in excess of $5,122.83 .

140. Mayflower had no lawful authority to demand or collect amount in excess of $1,741.89.

141. Mayflower intended to inflict severe emotional distress upon Plaintiff to coerce Plaintiff into surrendering thousands of dollars which Mayflower was not entitled to receive.

142. Under the circumstances, Mayflower had no lawful authority to refuse to relinquish possession of Plaintiff's property or to put Plaintiff's property into storage.

143. Mayflower's conduct was extreme, outside all bounds of decency.

144. Mayflower and/or its agents retained possession of Plaintiff's property and refused to make delivery for an amount not in excess of $1,741.89, until after the initiation of this action.

145. As a direct and proximate result of Mayflower's conduct, Plaintiff suffered severe emotional distress.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

(a) Award of damages to compensate her for emotional distress caused by Mayflower, said amount to be determined by a jury;
(b) Award of punitive damages;
(c) Award of attorneys' fees and costs; and
(d) For such and further relief as the Court deems just and proper.

COUNT IV

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

146. Plaintiff incorporates by reference the allegations of paragraphs 6 through 145 of the Complaint as though fully set forth herein.

147. Mayflower had a duty to exercise reasonable care in soliciting and obtaining the agreement to move Plaintiffs' goods, in moving those goods and in its communications with Plaintiff concerning the goods which Mayflower failed to deliver.

148. Mayflower breached its duties and committed negligent acts in the following manner:

149. Either negligently refusing to accept payment for the move by credit card as indicated in the June letter received by Plaintiff or by negligently failing to make clear to Plaintiff what kind of payment would be accepted for delivery of the goods,

150. Failing to deliver the goods, despite being informed of Plaintiff's urgent need for certain of these items.

151. Threatening Plaintiff with the auction of her goods,

152. Incorrectly charging Plaintiff $2,556.69 in violation of the "Binding Estimate,"

153. As a direct and proximate result of one or more of these negligent acts committed by Mayflower, Plaintiff sustained severe emotional distress.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

(a) Award of damages to compensate her for emotional distress caused by Mayflower, said amount to be determined by a jury;
(b) Award of punitive damages;
(c) Award of attorneys' fees and costs; and
(d) For such and further relief as the Court deems just and proper.

COUNT V

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(Violation of 18 U.S.C. § 1962(c) and/or 1962(d))

154. Plaintiff incorporates by reference the allegations of paragraphs 6 through 153 as through fully set forth herein.

155. At all relevant times, Mayflower was an entity capable of holding a legal or beneficial interest in property.

156. Mayflower, Century, and Admiral, in addition to the other disclosed local agents of Mayflower, comprise a group of moving companies associated together and operating in concert as an Enterprise to market, sell, and provide interstate shipping services for household goods.

157. Mayflower participated in the operation and/or management of the Enterprise and played a part in directing the Enterprise's affairs.

158. In violation of 18 U.S.C. § 1962(c), Mayflower, Century, and Admiral engaged in various acts of racketeering including, but not necessarily limited to, mail fraud (in violation of 18 U.S.C. § 1341), wire fraud (in violation of 18 U.S.C. § 1343), theft from an interstate shipment (in violation of 18 U.S.C. § 659), and extortion/robbery (in violation of 18 U.S.C. § 1951).

159. Mayflower has engaged in a pattern of such racketeering activity, committing similar and related predicate acts of mail and wire fraud against other individual shippers including, but not limited to, Craig J. Petrowiak, Kate Rice, and Dr. Gerald M. Aronoff.

160. The practices constituting the predicate acts described herein are a regular way of doing business for the Enterprise.

161. The activities of the Enterprise described herein affect interstate commerce in that the Enterprise continues to contract with as many as 400 or more shippers per day to transport household goods across interstate lines.

162. The Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income by reason of the Defendant's racketeering activity.

163. Mayflower, Century, and Admiral conspired to violate 18 U.S.C. § 1962(c) by entering into an agreement to facilitate the activities of the operators or managers of the Enterprise.

164. Mayflower, Century, and Admiral each agreed that someone within the Enterprise would commit at least two predicate acts in furtherance of the goals of the Enterprise.

165. Because of this conspiracy, the Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income.

166. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to triple damages plus attorneys fees.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc., and for relief as follows:

(a) Award of damages to compensate her for loss of property and other incidental and consequential damages including, but not limited to, loss of income;
(b) Statutory treble damages;
(c) Award of attorneys' fees and costs; and
(d) For such and further relief as the Court deems just and proper.

DATED: December 8, 2000

Respectfully submitted,

ANGIE CHEN

BY: _____
One of Her Attorneys

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